

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Transmission Company of Illinois	}	
	}	
Petition for a Certificate of Public Convenience	}	
and Necessity, pursuant to Section 8-406.1 of	}	
the Illinois Public Utilities Act, and an Order	}	
pursuant to Section 8-503 of the Public Utilities	}	Case No.: 12-0598
Act, to Construct, Operate and Maintain a New	}	
High Voltage Electric Service Line and Related	}	
Facilities in the Counties of Adams, Brown, Cass,	}	
Champaign, Christian, Clark, Coles, Edgar,	}	
Fulton, Macon, Montgomery, Morgan, Moultrie,	}	
Pike, Sangamon, Schuyler, Scott, and Shelby,	}	
Illinois.	}	

**BRIEF ON EXCEPTIONS OF THE MORGAN, SANGAMON, AND
SCOTT COUNTIES LAND PRESERVATION GROUP**

NOW COMES the Morgan, Sangamon, and Scott Counties Land Preservation Group (hereinafter referred to as "MSSCLPG"), by and through its attorneys, Edward D. McNamara, Jr. and Joseph H. O'Brien of McNamara & Evans, and for its Brief on Exceptions, states as follows:

1. This Brief on Exceptions relates to that portion of the Proposed Order from Meredosia to Pawnee, Illinois, the segment along which members of MSSCLPG have an interest. This Brief will not address nor express an opinion as to the Pawnee Substation.
2. MSSCLPG would respectfully submit that ATXI has the burden of proof in this matter. Pursuant to 220 ILCS 5/8-406.1(g), "[t]he Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed." Section 406.1(f) lists three specific criteria that must be satisfied: "(1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively

competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives. (2) That the public utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction. (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.”

3. This is not simply a comparative case in which the various parties dictate to the Commission the “least-cost means of satisfying the service needs.” This is a case in which the Commission must be satisfied and issue an order that the particular route or the particular substation is the least-cost means. Unless the Commission is satisfied that this essential criterion is met, and an order pursuant to Section 406.1(g) should be issued as per the time frame set forth therein, the Commission should deny that portion of the application, or the application in total, that does not meet this criterion. Section 406.1 is an expedited procedure. It is a statute that was enacted at the behest of ATXI.
4. This is a massive case brought by ATXI pursuant to a statute which was enacted at the behest of ATXI. The statute in question provides for an expedited procedure for the approval of the proposed project. As noted in the Proposed Order served July 3, 2013, ATXI had seven years to prepare its case. Intervenors had but three weeks to determine and propose alternate routes. This on its face is simply unreasonable. It is further noted in the Proposed Order that on two occasions the administrative law judges approached ATXI with a request that either a certain portion of the application not proceed on an expedited basis but in a separate docket, or in the alternative that the entire proposed route be considered on a non-expedited basis. In each instance, ATXI simply proceeded ahead on an expedited basis pursuant to

Section 406.1. ATXI's position is summarized on pp. 54 - 61 of the Proposed Order. Throughout this summary, we find at least eleven instances where ATXI attempts to support its position by relying upon lack of evidence. The undersigned would respectfully submit that lack of evidence should weigh heavily against ATXI and certainly in no way favor any argument made by ATXI herein. ATXI proceeded on an expedited basis and now would argue that the record should be more complete. This is a problem that ATXI created. ATXI certainly should not be allowed to create a problem and then use that problem to its advantage.

5. If ATXI had sought relief for a matter in a circuit court in Illinois on an expedited basis, we would be confronted with a much different scenario in at least two aspects. First, the court would inquire as to what is the hurry. Why should relief be granted now, without the parties having ample time to present their case? Assuming ATXI was able to overcome this first hurdle, the relief granted would be on a temporary basis for a given period of time, and certainly not made permanent until the parties were given their due process right to a full and fair hearing. At the hearings herein, ATXI attempted to argue that this is not the only Illinois statute that requires the Commission to issue a decision within a certain time limit. ATXI argues that this Commission must decide a public utility rate case within time limits set by statute. While this is true, the relief granted in a rate case does not continue in perpetuity. The rates remain in effect until this Commission decides otherwise. The relief granted in this case will in all likelihood affect the intervenors herein during their lifetime and probably during the lifetime of many generations to come.
6. The undersigned in their exceptions have not quarreled with the summary of the argument set forth in the Proposed Order. The undersigned would simply state that the arguments are

not evidence. The Commission must rely upon the evidence and reasonable inferences therefrom in making its findings of fact.

7. ATXI has stipulated with two intervenors as to the route between Meredosia and Pawnee. These stipulations must be considered taking into account the facts as they appear in the record. ATXI stipulated with MSCLTF. This party had proposed the route now advocated by the undersigned. This is in the record. MSCLTF has presented no evidence that the route it proposed on January 3, 2013 would now have an adverse impact upon MSCLTF. In fact, MSCLTF failed to present any testimony or evidence in this case. "Failure to produce evidence. Failure of a party to call a witness or to produce evidence within her control not equally available to an adverse party, it is sometimes said, gives rise to a 'presumption' that the testimony or other evidence would be unfavorable to her. *Tepper v. Campo*, 398 Ill. 496, 76 N.E.2d 490 (1948). A witness is not considered equally available if likely to be biased against a party. *Tonarelli v. Gibbons*, 121 Ill.App.3d 1042, 77 Ill.Dec. 408, 460 N.E.2d 464 (1984)." Michael H. Graham, Cleary & Graham's Handbook of Illinois Evidence, § 302.6 (8th ed. 2004).
8. FutureGen likewise stipulated with ATXI as to an alternate route. However, Kenneth Humphreys of FutureGen appeared and testified at the request of the undersigned. Please see MSSCLPG Cross Exhibit 1. The route as proposed by the undersigned will affect FutureGen in the same way that would the route proposed in the stipulation between ATXI and FutureGen.
9. The Pearce Family proposes an alternate route described in Exhibit A to its Alternate Route Proposal filed herein on January 3, 2013. Exhibit A indicates that this proposal utilizes the existing 138 kV line, the same line being advocated by the undersigned.

10. When all the evidence is analyzed, and as is reflected in the chart submitted in the exceptions, none of the intervenors who have submitted evidence will be affected by the MSCLTF route. MSCLTF has presented no evidence. However, MSCLTF did propose the very route as is advocated by the undersigned. There is no evidence to indicate that this route would now adversely affect MSCLTF.
11. As to the least-cost means, there is one quantifiable figure in the record. The route advocated by the undersigned will cost approximately \$36.8 million less than the route supported by ATXI. The record is clear in this regard.
12. The undersigned would submit that the Commission could make two reasonable findings of fact:
 - i. First, the Commission could make a finding that ATXI has not met its burden of proof with regard to the route from Meredosia to Pawnee and that the Commission is unable to enter an order granting the relief because the facts in the record do not support a finding as to the least-cost means for that particular segment. This is certainly not an unreasonable result as to the Meredosia to Pawnee segment. We are dealing with a \$36.8 million difference in the cost of construction. If ATXI has not presented sufficient evidence, and it is its burden of proof, the Commission should not grant relief as to that particular segment. Such a denial will not put an unreasonable burden upon ATXI or the intervenors. If additional facts need to be developed, ATXI is certainly in a position to develop these facts and proceed in a new case utilizing Section 406.1. The interested intervenors have prepared their cases. The heavy lifting has already taken place.
 - ii. In the alternative, the undersigned would submit that findings of fact can be made

that would support the grant of the relief sought by the undersigned. As is set forth in the analysis, and as is set forth in the language in the exceptions submitted by the undersigned, the route proposed by MSCLTF, using the existing 138 kV line, would appear to have no adverse effect upon the intervenors interested in this segment.

There is a clear cost differential as it relates to the cost of construction. This is clear.

13. The Commission must find that the project is the least-cost means if it is to issue an order herein authorizing the project in question. The Commission considers not only the cost of construction, but also externalities, when determining the least-cost means. As is set forth above, it appears that all intervenors, even stipulating intervenors, will not be adversely affected by the MSCLTF route. There exists very clear evidence that the cost of construction of the MSCLTF route, utilizing the existing 138 kV line, will be approximately \$36,782,000 less than the ATXI Rebuttal Recommended Route.
14. There are two families that have come forward in this case and called the Commission's attention to their private matters in this very public forum, the Pearce Family and the Ruholl Family. So there is no misunderstanding, the undersigned does not represent these families and is not authorized to speak for them. As an attorney involved in this case, the undersigned feels he has the right and duty to comment as to what he has observed. The Pearce Family has put forth a very credible case in a very dignified manner. The same can be said for the Ruholl Family. These families do not seek sympathy; they seek justice. What could be a more just result in this case than to designate a route that will eliminate problems for both the Pearce and Ruholl Families. Even disregarding the \$36.8 million difference in the cost of construction between the MSCLTF route and the ATXI Rebuttal Recommended Route,

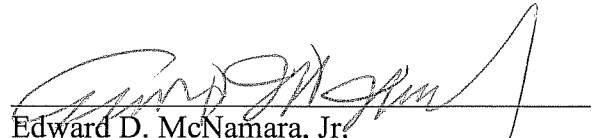
major consideration should certainly be these families. In addition, it should be noted that the Ruholl Family first learned of this case when ATXI sought permission to survey upon their land. Notwithstanding the late notice, they have come forward and presented a very credible case. The undersigned will be requesting oral argument before the Commission in this case. The undersigned would like the attorneys for ATXI to look the five commissioners in the eye and explain why a route that costs \$36.8 million less than the ATXI recommended route, a route that eliminates the problems for both the Pearce and Ruholl Families, as well as all interested intervenors along this portion of the project, should not be the selected route.

15. The clear evidence in this case reveals that a route following the existing 138 kV line would cost some \$36.8 million less than the route advocated by ATXI. The undersigned realizes that there are externalities which must be considered in selecting a routing option. Following the existing 138 kV line is the one route that will eliminate problems alleged by the intervenors along and upon this project segment. The undersigned would respectfully request that this route be the selected route. In the alternative, and in the event that the Commission, based upon the record, believes that a finding cannot be made as to the least-cost option for the Meredosia to Pawnee segment, it is requested that this portion of the application be denied. As is set forth above, this is not a case where the Commission must approve the routes that have been proposed. This is a case where the Commission must issue a decision with findings of fact and conclusions of law, granting or denying the application. One finding must be as to the least-cost means. If the record is unclear or uncertain, or there is a question as to the least-cost means, then the application should be denied as to that segment.

ORAL ARGUMENT REQUESTED

MSSCLPG respectfully requests Oral Argument before the full Commission. This is a massive case which has proceeded on an expedited basis and the undersigned would respectfully submit that the Commission would be aided in reaching a just conclusion if the parties are afforded the opportunity to orally present their respective cases.

Respectfully Submitted,
Morgan, Sangamon, and Scott Counties
Land Preservation Group,
By and through its attorneys,


Edward D. McNamara, Jr.
Joseph H. O'Brien

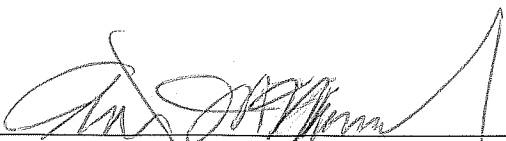
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VERIFICATION


STATE OF ILLINOIS }
 }SS
COUNTY OF SANGAMON }

Edward D. McNamara, Jr., being first duly sworn, deposes and says that he is authorized to execute this Brief on Exceptions; that he has read the above and foregoing document, has knowledge of the facts stated therein; and herewith states that the matters set forth therein are true in substance and in fact.

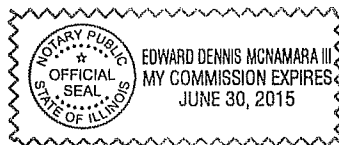
Subscribed and Sworn to before me
this 18th day of July, 2013.



Edward D. McNamara, Jr.




Notary Public



CERTIFICATE OF SERVICE

Edward D. McNamara, Jr., an attorney, hereby certifies that he served copies of the foregoing Brief on Exceptions on the individuals shown on the attached Service List, via electronic mail, on July 18, 2013.



Edward D. McNamara, Jr.

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